CRIMINAL APPEAL NO. 453 OF 1986.

Date of decision: 9.2.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. Nigam Shukla, A.P.P., for appellant-State.
Mr. N.M. Patel, advocate for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain,J.

February 9, 1996.

Oral judgment:

This is an appeal by the State challenging the order of acquittal passed by the learned Metropolitan Magistrate, Court No.13, Ahmedabad, in Criminal Case No.500 of 1984, wherein the respondents were charged for commission for the offence punishable under Sections 381, 411 and 414 read with Section 114 of the Indian Penal Code.

As a cardinal rule, if a charge for commission of any offence is alleged against any person, it must conform all the ingredients of that particular section. In this case, the main section for which the accused are charged is 381, that is, a case wherein theft of property in possession of master is committed by a Clerk or servant. In order to bring the case within the purview of this section, it is bounden duty of the prosecution to establish commission of theft. The offence of theft is defined in section 378 which says that whosoever dishonestly removes any movable property from the possession of a person without his consent shall be deemed to have committed theft. In this case, the prosecution has not been able to prove even removal much less a dishonest removal of property from the custody of complainant without his consent and, therefore, the very essential ingredient does not stand proved as a result of which it becomes difficult for the court to hold commission of theft.

It is not a case wherein the complainant had knowledge about commission of offence and in turn had informed police who commenced investigation. It is a case wherein the respondents/original accused were detained by police on suspicion and were interrogated. During the course of interrogation, address of the complainant was found on articles (clothes) seized, thereupon complainant was informed. The complainant thereafter lodged complaint with Sabarmati Police Station alleging theft by respondent No.1. In the complaint as well as oral testimony, the complainant has just made a cursory reference to the act of respondent No.1. The complainant has not made any definite and concrete allegation so as to bring the case within the purview of Section 381.

From the record, it also transpires that the Panchnama regarding recovery of stolen property is also not duly proved as Panch witnesses have not supported. Thus, the circumstance casts doubt about recovery of stolen property from the custody and possession of the respondents.

On reading examination-in-chief of the P.W.1, it becomes evidently clear that while completing entries in stock register, shortage of material did come to the notice of the complainant but the complainant did not suspect theft and did not initiate any action. It is only after the police who informed the complainant about some goods having been found in possession of the respondents, that too also at Dariapur Police Station, the complainant thought it fit to file complaint with Sabarmati Police Station, having jurisdiction. This circumstance raises

strong suspicion about commission of offence and involvement of respondents/accused. When the complainant did not think it fit and proper to lodge any complaint despite noticing shortage, one can infer that the shortage in stock was never intended to be attributed to theft. Thus, in my view, the circumstances discussed hereinabove rise doubt about truthfulness of case of the prosecution. Not only truthfulness but the circumstances also give rise to doubt about involvement of accused and if there is any doubt in the mind of Court about involvement of any of the accused in commission of alleged offences, then benefit must be extended to accused.

Mr. Shukla, learned A.P.P., has not been able to point out any evidence from the record which has been erroneously appreciated by the learned Magistrate or that conclusion is not in consonance with law. Thus, finding no error or perversity in appreciation of fact as well as question of law, I have no reason to upset the finding given by the learned Metropolitan Magistrate.

In the result, appellant fails and the appeal is dismissed.